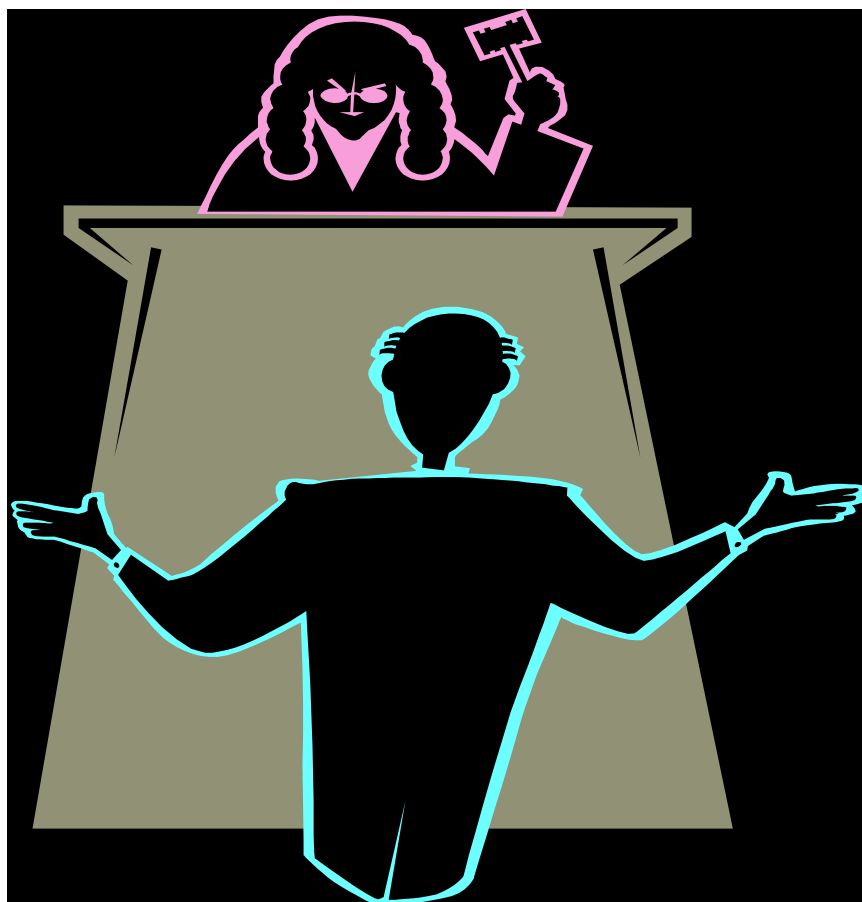


# *CIVIL CASES IN MISSOURI*



*Compiled by Millie Aulbur  
Director of Law-Related Education  
The Missouri Bar*

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# INTRODUCTION

*By Millie Aulbur  
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The purpose of this booklet is to assist teachers in instructing their students about civil law and to assist attorneys who do classroom visits. The fundamentals of civil law is an often overlooked subject in law-related education programs for two reasons: 1) Criminal law is the darling of newspapers, television shows and movies because criminal cases lend themselves to high drama more than civil cases. 2) The scope of civil law is enormous and teaching about it can appear to be a daunting task. However, students should be introduced to civil law because that is the area of the law that they are most likely to encounter: drivers' license requirements, making a will, titling a home, marriage and parenting issues.

After this introduction, there is a section on how to use this booklet in the classroom. These guidelines are followed by simple explanations of civil law that may be copied as handouts for students. (Teachers may want to consider asking an attorney to speak to the class about civil law. Teachers should provide the handouts to the attorney who will appreciate the guidelines for the presentation.) The introductory pages are followed by thirty-two case scenarios gleaned from actual Missouri cases that can be used for short mock-hearings or adapted to longer mock trials. If teachers wish to adapt the cases to longer mock trial, the attached appendix provides information about conducting a mock civil trial. The actual case decisions with citations are located at the end of the case scenarios.

This booklet about civil trials was inspired by a similar book compiled and published by the New York State Bar Association and the New York Education Department. For several

years, they graciously allowed The Missouri Bar to use and distribute their booklet. Fortunately, in the summer of 2001, Kerry Vining, a law student at the University of Missouri-Columbia, interned with The Missouri Bar and spent many hours finding interesting Missouri civil law cases, which made it possible for us to have this booklet using interesting Missouri cases.

The Missouri Bar is grateful for its long-time partnership with Missouri's teachers. The Missouri Bar, through its Advisory Committee for Citizenship Education, promotes law-related education in Missouri's classroom. For that reason, any and all copies of this booklet may be copied and reproduced for classroom or in-service use. Teachers may also want to request The Missouri Bar's publication *Stepping Out*, which is designed to inform young people about the legal issues they may face as they go from being a teenager to being an adult. Please contact Millie Aulbur if you have questions or requests at The Missouri Bar, P.O. Box 119, Jefferson City, MO 65102, 573 638-2250, [millea@mobar.org](mailto:millea@mobar.org).

# Guidelines for Classroom Use

**SUGGESTED GRADE LEVELS:** 5-12

**OBJECTIVES:**

- Students will be able to define civil law and give some examples of the main areas of civil law.
- Students will be able to identify the parties and purposes of civil lawsuits.
- Students will be able to discuss the major aspects of civil law case procedure.
- Students will be able to advocate for a particular issue in a civil case.

**MATERIALS:** Sufficient handouts, which are pages 7-11, and sufficient copies of the case scenarios that will be used.

**SUGGESTED TEACHING STEPS:**

1. Introduce students to civil law by distributing pages 7-10 of this booklet as handouts.
2. Prepare for short mock-hearings, using the case scenarios.
  - a. Prior to class time, make copies of the class scenarios that will be used: 1) teacher chooses the cases and copies those ahead of time, or 2) teacher distributes pages
  - b. Divide the class into groups of five. Each group will take a case. The student roles are: plaintiff, plaintiff's attorney, defendant, defendant's attorney and judge. Note: If an attorney is present, it will expedite matters if the attorney serves as the judge.
  - c. The students should spend five minutes looking over their cases. Lawyers should write a four to five sentence statement as a closing argument. Plaintiff and defendant should spend this time reading their statements so they can testify.
  - d. Some things to discuss with the students as to how this is both similar and different from an actual trial or a longer mock trial:
    - As in a regular trial, the plaintiff goes first because plaintiff has the burden of proof.
    - As in a regular trial, there will be closing arguments. However, unlike a regular trial, there will be no rebuttal argument by the plaintiff.
    - To expedite matters, there will be no opening statements.

- To expedite matters, there will be no objections. In actual judge-tried cases, there are few objections because most objections are aimed at not prejudicing the jury.
  - Cross-examination will not be necessary in the expedited trials because the student witnesses will tell all that they know about the case during direct examination.
  - At a regular trial, a witness would not be allowed to have notes, but because this is a mock hearing done in a short amount of time, students may have the witness statements at hand and may even want to read them.
3. The hearings may proceed as outlined on Page 11, which should be copied as a handout for the students. Courts are formal institutions and even for short, expedited hearings, the students should observe formal courtroom demeanor. This means using correct grammar—saying yes and no instead of yeah and nay, no gum chewing and no slouching. The set-up for the short hearings is very simple—have a desk or podium in the front of the room for the judges with one chair for the witness. If there is room, chairs for the parties and their lawyers could be placed in the front of the room.
  4. Debrief by talking about what kind of case this was, what the plaintiff was seeking, whether the students agree with the actual decision and what the students learned.

# What Is Civil Law?

**DEFINITION OF CIVIL LAW**--Civil law seeks to resolve non-criminal disputes such as disagreements over the meaning of contracts, property ownership, divorce, child custody, and damages for personal and property damage. A civil court is a place where people can solve their problems with people peacefully. The function of civil law is to provide a legal remedy to solve problems. Sometimes civil law is based on a state or federal statute; at other times civil law is based on a ruling by the court.



## TYPES OF CIVIL CASES

Civil law covers a wide spectrum of topics. Some of these topics are:

- consumer law
- international law
- agricultural law
- employment law
- animal law
- entertainment law
- business law
- family law
- sports law
- tax law
- intentional torts such as libel, slander, defamation of character, battery and assault.
- negligence



## PARTIES IN A CIVIL LAW CASE

**Plaintiff**--the person who feels he or she has not been treated fairly by another person and seeks a solution in a civil court. This party has the burden of proving that he or she was treated unfairly.



**Defendant**--the person who the plaintiff claims has treated him or her unfairly.



## EXAMPLES OF CIVIL LAW CASES

- **Contract Law:** You have just purchased your first car. In Missouri, you must have car insurance in order to title and obtain a license for the car. One day, an engine fire destroys your car. The fire is an accident; no one is to blame. Your insurance policy specifically states the insurance will pay you for the value of the car. This is a contract between you and your insurance company. Your part is to pay the premiums and not to intentionally harm your car and the insurance company's part is to pay you when something happens to your car.



- **Family Law:** Your best friend's parents get a divorce. The judge awards custody of your friend's sister to the mother and of your friend to the father. The friend and sister want to live together. They ask a lawyer to change the custody order.



- **Intellectual Property Law:** You are an aspiring writer who posted a story on the Internet. Under copyright laws, this story belongs to you, and you have noted that the story is yours with a copyright line. However, a few months after posting your story, you see the same story, with a different title and someone else claiming authorship printed in a magazine. You may sue the magazine and the alleged new author for pirating your story.

- **Tort Law:** You are a basketball star who was late for practice. You rushed out your door, tripped over your neighbor's dog, and broke your wrist. You consider suing your neighbors. Whether or not you win your lawsuit will depend on who is at fault. Are your neighbors to blame? Or should you have been paying attention to where you were going? If you do sue, you will be the plaintiff and your neighbors will be the defendants. You or your attorney will allege that the neighbors should have had their dog in their yard. Because they did not, you broke your wrist, incurred medical expenses, and worst of all, you missed the entire basketball season. You are suing the neighbors for medical expenses and for the pain and suffering caused by missing the basketball season. The neighbors may claim that, even though their dog was at your door, your injuries were at least partially your fault because you didn't look where you were going and witnesses say that the dog was barking loudly at the time. The defendant is claiming you "contributed" to your injuries and must pay some of the damages yourself. This is called comparative negligence.





# The Differences between Criminal and Civil Law Cases

A state circuit court and a federal district court handle both civil and criminal cases. Criminal and civil cases are distinct from one another in the following ways:

## Criminal Law

1. The plaintiff is always the state or federal government.
2. Punishment may be fine and/or imprisonment.
3. State or federal statutes always establish criminal law.
4. The jury decision in a criminal trial must be unanimous.
5. The burden of proof in a criminal trial is “beyond a reasonable doubt.”
6. Only the defendant may appeal in a criminal case.
7. In a criminal case, the defendant is either guilty or not guilty.

## Civil Law

1. Both parties may be anybody, including governments, corporations and individuals.
2. The loser in a civil case cannot be imprisoned, even if he or she cannot pay the damages.
3. Civil law is established both through state and federal statutes and through court decisions.
4. In Missouri, the jury decision must be 9-3 for the plaintiff to win. States vary. Federal courts do require an unanimous verdict.
5. The burden of proof in a civil trial is “preponderance of the evidence,” which sometimes is defined as “more likely than not.”
6. Either party may appeal in a civil case.
7. In a civil case, the plaintiff and the defendant may both be found partially right and partially at fault.

# **PROCEDURE IN A CIVIL CASE**

1. Plaintiff files a complaint with the appropriate court:
  - If the complaint is by a Missourian against another Missourian or a Missouri company or if it is about a Missouri law, the usual place to file a lawsuit is in the circuit court in the county in which one of the parties resides.
  - If only one of the parties is from Missouri, the plaintiff may file the complaint in a federal court.
  - If the complaint is about a federal law, the plaintiff must file in a federal court.
  - If the damages sought by the plaintiff are under \$3,000, the plaintiff may file in Small Claims Court, which may part of a municipal court or part of the county court system.
2. The court issues a summons or writ, which notifies the defendant about the case. (Note: there is a filing fee or an amount of money that the plaintiff must pay to the court to file a complaint.)
3. Summons is delivered to the defendant by mail, by the person bringing the suit, by the sheriff or by a service agent.
4. The defendant, usually through an attorney, answers the claims in writing, usually denying the plaintiff's allegations.
5. Usually, a period of discovery follows where parties exchange relevant documents and conduct depositions, which are interviews with the parties and possible witnesses.
6. The parties then ask the judge to set the case for trial. The parties may reach a settlement before or after this time. Occasionally, there is summary judgment. This is where the judge decides the case based on written information submitted by both parties.
7. The trial may be a jury or non-jury trial at the request of either party.
8. Plaintiffs must bring actions in civil courts within a certain amount of time from when the event causing damage occurred. These times, or statute of limitations, may range from one to ten years. Some examples are:
  - In ten years—any action for payment of money or property.
  - In five years—contract violations, trespass on real estate, possible fraud.
  - In two years—most intentional torts such as slander, libel, battery and assault, and most negligence cases.

# CONDUCTING A SHORT HEARING

1. Teacher servers as bailiff and asks all present to rise as the judge (who has stepped outside of the room or off to one side of the room) enters the room.
2. Teacher-bailiff announces the court of Judge \_\_\_\_\_ (student's name) is now in session.
3. Judge asks everyone to be seated and calls the case by saying, "The case of \_\_\_\_\_ versus \_\_\_\_\_ is now called." Example: If the first case found on page 12 was the case being called, the judge would say, "The case of *Allen versus Fast Food Chain* is now called."
4. The judge asks the parties if they are ready and the lawyers for the parties answer respectfully, "Yes, your honor."
5. The judge asks the plaintiff to call the first witness and the plaintiff's lawyer calls the plaintiff as a witness.
6. Plaintiff comes forward and the teacher-bailiff asks the plaintiff to raise his/her right hand and to swear to tell the truth.
7. Plaintiff's attorney conducts direct examination:
  - State your name.
  - Why are you here?
  - Please tell us what happened.
8. Defendant' attorney calls defendant.
9. Defendant comes forward and the teacher-bailiff asks the defendant to raise his/her right hand and to swear to tell the truth.
10. Defendant's attorney conducts direct examination:
  - State your name.
  - Why are you here?
  - Please tell us what happened.
11. Parties' attorneys make their closing arguments, which is a simple statement why his/her client should win the case. (Limit to 1 minute each.)
12. Judge renders a decision.
13. Students vote if they agree or disagree with the judge and discuss the case.
14. Teacher shares the actual court decision.

# MISSOURI CASE SCENARIOS

Note: These scenarios are from actual cases but the names have been changed and the fact patterns shortened.

## CASE #1

The Plaintiff, Mr. Allen, is suing Defendant, Fast Food Chain, for damages for injuries suffered on the restaurant premises.

### *Plaintiff: Mr. Jones*

One night, I was at a friend's home near Fast Food Chain. I got hungry and decided to go to Burger World to get a hamburger because Fast Food Chain was closed. But, in order to get to Burger World, I had to cut through the property of Fast Food Chain. When I got to Burger World, I realized that I had no money and decided on my way back to see if there was anything left in the dumpster behind Fast Food Chain. As I climbed over the wall surrounding the dumpster, it collapsed and I fell, breaking my leg. I know that Fast Food Chain was aware of the danger the wall posed and they have a duty to keep the premises safe, so now they owe me money for the injury I suffered.

### *Defendant: Fast Food Chain*

We admit that there was knowledge of the damaged wall surrounding the dumpster. But, what was Mr. Allen doing in the dumpster after hours, in the middle of the night anyway? We cannot expect or foresee a person climbing into the dumpster, so we do not owe a duty to a person who injures themselves while doing so.

.....

## CASE #2

The Plaintiff, Ms. Carpenter, is suing Defendant, Grocery Store, for damages for harm done to her automobile.

### *Plaintiff: Ms. Carpenter*

I work at the restaurant that is next to Grocery Store and my car was parked in the restaurant's parking lot, which is separated by a speed bump from Grocery Store's parking lot. On a stormy afternoon, while I was working, a few stray grocery carts slammed into my car causing extensive damage. Now I want Grocery Store to pay for the repairs!

### *Defendant: Grocery Store*

This is exactly the sort of thing that our store cannot be responsible for. We even post signs in our parking lot that relieves us from any liability where a car is damaged by a cart. She will just have to pay her own damages because we are not responsible.

.....

### CASE #3

The Plaintiff, Mr. Jones, is suing the Defendants, Mr. and Mrs. Jacobs, for damages due to Defendants' negligence.

*Plaintiff: Mr. Jones*

I was delivering milk on my regular route. When I stopped to unload, I left the truck unattended. As I was making my delivery, I happened to notice, out of the corner of my eye that my truck was rolling. I ran after it and discovered a small boy, around 3 years old, inside, who had released the emergency break. I held onto the boy, as I was being dragged, and the truck came to a stop by running into a building. I recently found out this is not the first time that the boy has escaped from his parents care. He has gotten out through the window of his room and gotten into a neighbor's home through their window before. Now I want his parents to pay for the injuries I suffered as a result of the accident.

*Defendants: Mr. and Mrs. Jacobs*

We cannot be held responsible for what our three-year-old child does. He is only three years old and he has no ability to be negligent. Therefore, he cannot be held accountable either. We thank Mr. Jones for holding onto our son so that he would not be more seriously hurt, but we are not going to pay him any money.

.....

### CASE #4

The Plaintiff, Mr. Randall, is suing Defendant, Mr. Hutchins, for making defamatory statements about Mr. Randall in Mr. Hutchins' article in the local newspaper.

*Plaintiff: Mr. Randall*

Mr. Hutchins wrote an article in the Metro Times that falsely stated that I had closed down my restaurant because I was behind in rent. The article went on to say that I had vandalized the restaurant and took stolen goods in the hopes of leaving town with them. This is not the case at all. If Mr. Hutchins had done any checking at all he would have found that I was merely in the process of renovating the restaurant and I was certainly not behind in rent. Now, my reputation is ruined in the community and it is all Mr. Hutchins' fault! He should pay to compensate for losses that I have felt.

*Defendant: Mr. Hutchins*

This was a newsworthy story in our community and a matter of public concern. People had a right to know what was going on right in their own town. I got my story from the Landlord of the property, but I was completely neutral in my writing. While I am sorry that the stories weren't straight, this error is not the kind that I should have to pay for.

.....

### CASE #5

The Plaintiff, Mrs. Jeffers, is suing the Defendant, Mr. Publisher, for defamation.

*Plaintiff: Mrs. Jeffers*

I am recently widowed and suffered great loss from the death of my husband. After my husband's death, Mr. Publisher wrote a book about him that contains false statements and matters. This book greatly belittles the memory of my husband and has scandalized and provoked my entire family. Because these statements are false, I think that Mr. Publisher should pay for the harm he has caused to my husband's name and the anguish that my family and I have been put through.

*Defendant: Mr. Publisher*

I did not injure Mrs. Jeffers' reputation. While I am sorry that, things that were said in my book upset her, but her husband has died and there is no way for his reputation to be tarnished. Therefore, Mrs. Jeffers has no right to sue me.

.....

### CASE #6

The Plaintiff, Mr. Preston, is suing Defendant, Mrs. O'Donnell, to recover money owed to him on a contract.

*Plaintiff: Mr. Preston*

I had a contract with Mrs. O'Donnell to build her a pool. Well, I did just that and she has been using the pool for the past two years. Yet, she is refusing to pay me the rest of the money that she owes me. I want her to pay me!

*Defendant: Mrs. O'Donnell*

Oh, we had a contract all right. But he did not complete the contract. The pool leaks and he is refusing to fix it. He knew it would leak when he was in the process of building it, but he decided that the drains that would prevent the leaks weren't necessary and the pool wouldn't leak! Well, that is not the case. We cannot use the pool anymore because of Mr. Preston and we had trouble from the beginning with the leaks. I don't owe him a dime until he fixes the pool!

.....

### CASE #7

The Plaintiff, Mr. Elias, is suing Defendant, Ms. Jenkins, for damages for injuries his son suffered on account of a dog bite.

*Plaintiff: Mr. Elias*

My son was innocently walking down the road when out of nowhere, a dog rushed at him and dragged him onto Ms. Jenkins' property causing great physical and emotional trauma. Because the incident took place on her land, she should have to pay to relieve his suffering!

*Defendant: Ms. Jenkins*

It was not my dog that caused these injuries. I rent the land to Mr. Simpson and he owns the dog. I had no way of knowing that this dog was dangerous. If Mr. Elias wants to sue someone, it should be Mr. Simpson. I don't owe Mr. Elias anything.

.....

#### CASE #8

The Plaintiff, Mr. Calvin, is suing Defendant, Casino, for breach of contract.

*Plaintiff: Mr. Calvin*

The Casino offered through an advertisement that I come and play black jack at their establishment. So, I took them up on their offer, thus creating a binding contract. But, before I could place a bet, an employee came up to me and told me that I was suspected of "counting cards" and was prohibited from playing black jack. He went on to say that I could play any other game that they had. I did not want to play another game and they had a contract with me. They breached their contract and I want money for compensation!

*Defendant: Casino*

We did not "offer" anything to Mr. Calvin. We were merely inviting him to come and play black jack at our casino. There was no contract and we have every right to take someone away from the table who is suspected of cheating. Because there was no contract, it could not be breached and we owe him nothing.

.....

#### CASE #9

The Plaintiff, Mrs. Alton, is suing Defendant, Mr. Dealer, for damages for private nuisance and negligence.

*Plaintiff: Mrs. Alton*

My husband and I live on 300 acres of land, which is next to Mr. Dealer's land. Mr. Dealer runs a firing range on his land. It was fine in the past, but then he decided to build a new range, which sends high-powered bullets onto our land. The bullets have hit some of our trees and our house has even been hit twice. This has caused my husband and me much distress and we can no longer enjoy our property anymore without fear of being hit by stray bullets. I want Mr. Dealer to shut at least that part of the firing range down and to pay us damages to compensate for the emotional distress that this has caused us.

*Defendant: Mr. Dealer*

I have run this firing range for years now without any complaint from the Altons. If they had a problem, they could have come to me. We had a good relationship up until now. I am sorry that the bullets strayed onto their land and I promise to change the range so that these problems won't continue, but I don't think that I should have to pay them any money.

.....

#### CASE #10

The Plaintiff, Ms. Compton, is suing Defendant, Mr. Benedict, for damages for injuries she suffered while in Defendant's store.

*Plaintiff: Ms. Compton*

I went into Mr. Benedict's store to buy some groceries. I was in a hurry, I admit, but when I was about to the register I slipped and fell. When I got up, I noticed that there was something green, like broccoli or a pickle or something like that. The store should have noticed the produce because it was located in the cashier's view. I broke my ankle as a result of my fall and now I want Mr. Benedict to pay for my medical bills.

*Defendant: Mr. Benedict*

I was there after Ms. Compton fell, and I didn't notice any produce near where she fell. While I did notice some gum on the floor, it couldn't have been the cause of the fall. Besides, we have no idea how long something had been there. No one reported anything in the way of the aisle. I had no way of knowing that anything could've caused a fall. Therefore, I should not be held liable for any injuries that Ms. Compton suffered. She should slow down while she's in the store.

.....

#### CASE #11

The Plaintiff, Mrs. Easton, is suing Defendant, Mr. Rice, for damages caused by a loss of use of her property.

*Plaintiff: Mrs. Easton*

I bought my home and the property from Mr. Rice's daughter. I gather that Mr. Rice had sold the land to his daughter before me because there are tractors and trucks and cars and other garbage that was left by Mr. Rice. I have asked time and time again for Mr. Rice to move his property off of the land, but he has refused to do so. Now, I want him to pay me money for the time that I have lost enjoying my land.

*Defendant: Mr. Rice*

If it was such a problem for Mrs. Easton, she should have done something on her own so that she could make use of the property. Perhaps she could have moved the property herself, or rented the land or something like that. I really don't know, but it isn't my fault she didn't do anything to help herself. But I shouldn't have to pay her any money.

.....



### CASE #12

The Plaintiff, Mr. Carpenter, is suing Defendant, Mr. Briggs, for damages for not paying for work done.

*Plaintiff: Mr. Carpenter*

Look, I did work for Mr. Briggs' tenant on the construction of the tenant's restaurant. I put blood, sweat, and tears into that project. Only, the restaurant closed down after three months and the tenant skipped town without paying me the remainder of the money. Well, Mr. Briggs is the owner of the building and is now benefiting from the work I have done. So, he should pay me for the remainder!

*Defendant: Mr. Briggs*

I had nothing to do with my tenant opening a restaurant! Sure, I rented him the space and I knew that he wanted to open a restaurant. But, I had no idea what kind of work he was doing down there and I am not going to be held liable for his mistakes! I owe Mr. Carpenter nothing!

.....

### CASE #13

The Plaintiff, Ms. White, is suing Defendant, Mr. Jackson, for damages for assault and battery.

*Plaintiff: Ms. White*

My friend, Susan, and I were riding our horses along a Route 109, which we have been doing for years. Well, on this particular day, as we rode past Mr. Jackson's house, he came running at us yelling for us to get off his land. I told him that we were on a public road and had every right to be there. Well, he got very irate and words were exchanged. Anyway, he got so angry that he hit my horse in the jaw, which caused me to lose control of the horse! As we rode away, Mr. Jackson threw rocks at my horse and I. Well, needless to say I was very distraught and so was my horse. I want Mr. Jackson to pay for all the damage that he has caused us!

*Defendant: Mr. Jackson*

What Ms. White forgot to tell you, is that she and her horse always seem to trample all over my land when they ride by my house! I was just yelling at her to tell her to stay off! I am sorry that I hit her horse, but I did nothing to Ms. White, and so I owe her nothing!

.....

### CASE #14

The Plaintiff, Mrs. Williamson, is suing Defendant, Mrs. Sandal, for the money she is owed on her husband's estate.

*Plaintiff: Mrs. Williamson*

I was legally married to my husband, Sam Williamson, at the time of his death. Yet, when he made his will out ten years ago, we were not married, only friends. At that time, he left me only \$40,000 and a car, not thinking that we would be married years

from then. Now, his estate is worth over a million dollars. I feel that I am entitled to more than that! He obviously did not think about his untimely death, or he would have changed his will! I feel that I am his true heir and deserve to inherit more of his estate.

*Defendant: Mrs. Sandal*

Look, if my brother wanted his wife to obtain more of his estate upon his death, he would have provided for her in his will. He did leave her something in his will, so he was obviously thinking about her. She was only married to my brother for a few years before his death. She is getting what is rightfully hers, and should get no more than that.

.....

#### CASE #15

The Plaintiff, Mrs. Osgood, is suing Defendant, Mr. Osgood, for dissolution of marriage and appropriate property distribution.

*Plaintiff: Mrs. Osgood*

My husband and I fell in love several years ago. We were both previously married with children. We decided to get married in Mexico. We said our vows in front of some kind of official, we said our vows in the presence of a few witnesses and we signed a certificate. Now he is claiming that we were never married. Well, we were. When we got back, we told everyone about the wedding, everyone considered us married, and so did we. I don't know what my husband is thinking. But, I think that we should have to get legally divorced and the property should be appropriately distributed.

*Defendant: Mr. Osgood*

Our marriage was no marriage. She says we were married in Mexico, but we weren't legally married there. We didn't follow the exact requirements of Mexican law. So, the marriage in Missouri is not legal either! She doesn't deserve a penny of our "marital" property!

.....

#### CASE #16

The Plaintiff, Ms. Dillon, is suing Defendant, Mr. O'Brian (Chris's brother), to recover money she is owed on her "husband's" estate.

*Plaintiff: Ms. Dillon*

Chris and I were married right before his death. We lived together for eleven years before he became gravely ill and we talked often about marriage. When he was in the hospital on his deathbed, he wanted us to be married, so that he wouldn't die alone. Only, it was a state holiday, and we were unable to obtain a license. But, we had the hospital chaplain perform the ceremony in hopes that we could get the license the next day. Unfortunately, Chris died that night. Being his only heir I deserve his estate.

*Defendant: Mr. O'Brian*

While I know that Jennifer and Chris were very much in love, they were never married. Sure, they lived together for many years, but this state does not recognize common law

marriage. So, you have to go through all the legal requirements before you can be legally married here. But, because they never got the license they were never married!

.....

#### CASE #17

The Plaintiff, Ms. Lawless, is suing Defendant, Mr. Walters, to have the deed given to him declared invalid.

##### *Plaintiff: Ms. Lawless*

My mother was an elderly woman, who was taken advantage of by Mr. Walters. He somehow convinced her, though some sort of influence, to deed her property to him. Three years later, my mother was diagnosed with dementia, basically a loss of mental capacity. She was not capable of deeding over property at the time she made the deed. Mr. Walters probably used his influence over her so that she would deed him the land. Before the land was deeded, my mother gave the land to my brother and I in her will. That is where it belongs now.

##### *Defendant: Mr. Walters*

I took care of the farm for Jenny's mother for many years. After a while, her mother needed even more help around the farm, such as managing the finances and driving her around town and the like. She did pay me for these services. And it was because of me that her mother was able to stay on the farm as long as she did. She knew how much the farm meant to me as well and felt her children had no interest in it. There was no influence because I did not expect her to do such a kind and generous thing.

.....

#### CASE #18

The Plaintiff, Mrs. Neiman, is suing Defendant, Mr. Mauer, to have their mother's will declared invalid.

##### *Plaintiff: Mrs. Neiman*

Before my mother went into the retirement home, her will gave half of her estate to me and half of her estate to my brother, Jim. My brother and I have not had a good relationship for a while now and visited my mother on different days, but we both took care of her. While my mother was there, she was diagnosed with Alzheimer's disease and they characterized it as stage 2 or 3. About a year after she was put in the retirement home, my brother took her out without my knowledge and without telling the home her new address. Every time I tried to call my brother, he would hang up on me. He only called after my mother passed away. Now, mysteriously, my mother's will gives 95% of her estate to Jim and 5% to me. Jim obviously put her up to it while she was not of sound mind. It should be invalid and I should get half, like I was supposed to.

##### *Defendant: Mr. Mauer*

My sister has no idea what she is talking about. Yes, the will was changed after she was in my care and out of the retirement home. But, my mother knew what she was

doing and thought that Karen was causing trouble with our family at the time. Besides, if Karen really wanted to see my mother she could have come to my home and visited. I am entitled to what is in the will.

.....

#### CASE #19

The Plaintiff, Mr. Lansing, is suing Defendant, Mr. Nowell, for injuries suffered due to negligence.

##### *Plaintiff: Mr. Lansing*

I signed up with Mr. Nowell's health club about a year ago. During that time, I did suffer some strains from using the equipment, but I know that is because I failed to stretch. But, one day, while I was using the rowing machine, the cord snapped and the handle smashed into my mouth. I have had to have several surgeries and have suffered great pain in my mouth. If the health club had inspected the machine, they would have noticed the part missing. It is there fault and now they owe me money for all the doctor's visits and surgeries I have had.

##### *Defendant: Mr. Nowell*

Look, Mr. Lansing signed our "Retail Installment Contract" that clearly states that our club will not be held responsible for any or all claims that our patrons may have. Negligence is clearly covered by "any and all claims" and so we owe Mr. Nowell nothing.

.....

#### CASE #20

The Plaintiff, Ms. Fuller, is suing Defendant, Mr. Burba, for damages for injuries suffered in a car accident.

##### *Plaintiff: Ms. Fuller*

I was sitting in my parked car, waiting for my boyfriend to come out of the store, when one of Mr. Burba's cabs ran smack into me. Now, I know they paid me for the damages of the car. But, now I have realized that I will suffer from back problems for the rest of my life. I should be compensated for that and Mr. Burba should pay me!

##### *Defendant: Mr. Burba*

I am truly sorry that Ms. Fuller suffered injury, but she should have mentioned this before she signed the settlement agreement. She met with our lawyer who offered her a settlement of damages to the car. The lawyer asked Ms. Fuller if she was injured. She said she felt stiff and shaken, but she told the lawyer she was not going to see a doctor about the injuries. The lawyer told her that by signing the settlement agreement, she was no longer able to sue our company for any future injuries or claims. So, we owe her no more money.

.....

## CASE #21

The Plaintiff, Mrs. Tanner, is suing Defendant, Mr. Downs, for damages due to mental distress.

### *Plaintiff: Mrs. Tanner*

I work in Mr. Downs' building. One day, when I took the elevator up to another floor, the elevator stalled and I was stuck in there for over an hour before anyone could get me out. Well, I tried not to panic, but the entire experience just overwhelmed me. I couldn't do work for the rest of the day. The next day, when I was on the elevator, I collapsed. At the hospital, they said I was suffering from anxiety and gave me something to calm down. I haven't been able to sleep or go on an elevator since. I want Mr. Downs to pay for all the anguish that I have suffered!

### *Defendant: Mr. Downs*

I am sorry that the experience was not a happy one, but it is not my fault. I am not responsible for the elevator and what happens to it. Besides, she didn't suffer any physical injury. I'm sure that she is just over excitable. Give it a few more days, and she will be just fine. I shouldn't have to pay her a dime.

.....

## CASE #22

The Plaintiff, Ms. Bradley, is suing Defendant, Mr. Copeland, for false imprisonment.

### *Plaintiff: Ms. Bradley*

I have worked at Mr. Copeland's store for over a year and obviously was aware of store policies. One day, the store had a special on diapers. Well, I thought I should pick some up for my sister, who recently had a baby, since they were so cheap. Because the lines were so long, I decided to wait until it was less busy to purchase my items, so I put them behind the manager's counter until I had a chance. The manager on duty knew what I was doing and when I had the chance, the manager was there to supervise the purchase. Just before I left for the day, another employee told me that I had to go up to the Mr. Copeland's office. He made me stay there for over 3 hours and kept accusing me of stealing two things of diapers. Well, I had no idea what he was talking about and offered to pay for the items, but he refused. He fired me, then called the police and had me taken away in front of the whole store. It was really humiliating, and the charges were eventually dropped. But, I am extremely upset, and think he should compensate me!

### *Defendant: Mr. Copeland*

I witnessed the purchase from above the store and saw that two of the items were not wrung up! She is lying. I just know it. And she wouldn't admit. Well, that really aggravated me. So, yes, I did call the police, but only because she was violating the law! I owe her nothing!

.....

### CASE #23

The Plaintiff, Ms. Holloway, is suing Defendant, Mr. Holloway, for injuries she suffered while under his care.

*Plaintiff: Ms. Holloway*

While I was visiting my father, my brother and I were playing outside. Everything was going fine, until the gas tank and stove exploded. I suffered serious injury because of it. I will never look the same as I did. My father was obviously at fault here because he should have known that the tank and stove needed to be fixed. He should pay for my hospital bills, but he won't.

*Defendant: Mr. Holloway*

This is ridiculous! Charlotte is my daughter. A daughter can't sue her own father for something that he obviously could not have prevented. She shouldn't be able to sue her father at all. Isn't this country supposed to protect family unity and harmony? I am really sorry that Charlotte was hurt, but I don't think that my own daughter should sue me for money!

.....

### CASE #24

The Plaintiff, Mrs. Handler, is suing Defendant, Mr. Handler, for injuries she suffered from a gunshot wound.

*Plaintiff: Mrs. Handler*

My husband and I have not been doing well these past few months. I moved out of the house about two months ago. Well, my husband has not been taking this separation very well. Anyway, when I came home one night from work, my husband was standing outside and I told him that I didn't want to talk then. But, he insisted. As I walked into the house, he tried to come in and as I tried to hurry inside, there was a gunshot and that's all I remember. He obviously was trying to hurt me. Now, I think he should pay for the damage he caused!

*Defendant: Mr. Handler*

I didn't mean to hurt my wife. It was an accident. I want nothing more than to be back with my wife. Why would I want to hurt her? She lives in a wooded area and I always carry my rifle with me for protection. It was not my intention to hurt her. Even so, we are still married, and a wife cannot sue her own husband!

.....

### CASE #25

The Plaintiff, Mr. Huitt, is suing Defendant, Mr. Lewis, for alleged money owed for installment of a new fence.

*Plaintiff: Mr. Huitt*

I have lived on my land for over 30 years now and Mr. Lewis is my neighbor. Before he moved in, the previous owner and I used to keep up the fence that separates our land and share all the expenses. Now, this fence has been there since before I moved in. One day, I contacted Mr. Lewis about building a new fence. He said he would have to look at it, but he never did. So, I had the fence built and now he owes me half the bill.

*Defendant: Mr. Lewis*

I am not going to pay Mr. Huitt a dime. I never did get the chance to check out the fence, but I didn't have time. Mr. Huitt didn't tell me he was going to go ahead and build the fence. Had I had the chance to view the fence, I might not have thought it needed to be replaced. I've only lived on my property for less than 2 years! I don't think I should have to pay my neighbor a penny.

.....

### CASE #26

The Plaintiff, Miss Hauck, is suing Defendant, Mr. Everett, for damages resulting from an assault and battery.

*Plaintiff: Miss Hauck*

When I was in Mr. Everett's store, he thought that he saw me shoplifting a candy bar. So, he and his security men took me back to their office and questioned me until my mom and dad got there. While I was there, they weren't very nice to me and, in fact, they hurt me pretty badly. But, my mom and dad decided to sign a contract saying that I can't sue Mr. Everett in exchange Mr. Everett couldn't arrest me or press charges against me. Now, I was hurt and I feel that he should pay me for those injuries.

*Defendant: Mr. Everett*

Look, nothing happened when we detained Miss Hauck. We just don't want kids coming in and stealing our merchandise. It is standard policy. We didn't want to press charges on her, especially after talking to her parents. She signed this contract, not just her parents. She knew what she was getting into and now she is breaking that agreement. We shouldn't even be here!

.....

### CASE #27

The Plaintiff, Mrs. McGraw, is suing Defendant, Mr. McGraw, to declare a prenuptial agreement invalid.

*Plaintiff: Mrs. McGraw*

Before we were married, George and I had agreed that we would have a prenuptial agreement. So, we had one made up. I then became worried about my children from

my first marriage and wanted them to be taken care of. The day before the wedding, George brings me a new agreement that includes some of the children's needs, but sacrifices mine. I didn't really get to read the agreement. I just signed it. Now I realize how different it is and that it didn't account for many of his assets.

*Defendant: Mr. McGraw*

Look, the new agreement was made up in a hurry. I wanted to take care of my wife's concern for her children. After we were married, I adopted the children and put them through college like the agreement says. She accepted these benefits, so she obviously understood what she was getting out of the agreement. I fulfilled the agreement and she should not be able to reap the benefits and then ask for more than she agreed to!

.....

#### CASE #28

The Plaintiff, Mrs. Post, is suing Defendant, Mr. Post, for having a custody award declared invalid.

*Plaintiff: Mrs. Post*

My husband and I were divorced about two years ago. During the trial it came out that I was a lesbian and therefore I was unfit to be a proper parent. Now, I love my children, and there is nothing more that I want than to be with them as much as possible. My personal life has had no affect on the children and John offered no evidence that there was. Isn't our society changing at all?

*Defendant: Mr. Post*

It has been well established that a fit parent is one with the proper morals. Obviously, the court felt that there is no way that her personal life does not have a bad affect on the children. And I agree with the court. Lisa's visitation should be limited and I should retain full custody of the children!

.....

#### CASE #29

The Plaintiff, Ms. Carson, is suing Defendant, Mr. Daly, for damages for injuries sustained due to his negligence.

*Plaintiff: Ms. Carson*

One night, as I was walking to my car after a night at the Disco, and a man pulled up next to me in his car, pulled out a shotgun, and told me to get in the car or he would kill me. So, I got in, but as we were turning the corner, I was able to jump from the car. I ran to the police station and filled out a report. Well, the police gave the information, including my name and address, to Mr. Daly's paper knowing that the person was still at large. The very next day he printed it in his newspaper, also knowing the assailant was still at large. As a result of this negligence, my assailant now knew where to find me and he used that information to drive by my house, sit in front of my house and make phone calls. Finally, the police caught him but not before I suffered extreme emotional distress. Mr. Daly is responsible for this and I think I should be compensated!



*Defendant: Mr. Daly*

I am truly sorry that this lunatic stalked Ms. Carson. But, I do not owe her anything. Her report is considered a public record and was a matter of public concern. So therefore, my newspaper had a right to print it and did nothing wrong. If she wants to sue someone, why doesn't she go after her assailant!

.....

#### CASE #30

The Plaintiff, Mr. Lewinski, is suing Defendant, Mr. Fleiss, for invasion of privacy by appropriation of his name.

*Plaintiff: Mr. Lewinski*

I have worked for Mr. Fleiss and his University for several years now doing research that has proved to be very valuable. We have constantly tried to maintain grants so that the research could go on. Well, without my permission, Mr. Fleiss used my name as a principal researcher on a grant application. After the grant was approved, Mr. Fleiss decided he was not going to use me as a researcher on the project. He got the approval with my name. He was advantaged because of my name. Therefore, he should pay me a proper amount for such a use.

*Defendant: Mr. Fleiss*

We are always applying for grants. It is extremely common practice. Even more so, Mr. Lewinski, each year, signs an agreement that states he is required to collaborate on research projects that are granted to the University. That means he may or may not be assigned to one, but he is required to research when assigned. Therefore, the fact that we used his name did not actually advantage us in any way. He is still working for us now. We don't owe him a dime.

.....

#### CASE #31

The Plaintiff, Dr. Rose, is suing Defendant, Dr. Lilac, for breach of contract.

*Plaintiff: Dr. Rose*

Dr. Lilac was employed by our veterinary clinic a few years ago. When she first came to us, she signed an agreement that included a non-competition agreement. That agreement said she could not work at another clinic within a 35 mile radius for four years after terminating employment at our clinic. Well, it was only a matter of weeks after she left our clinic that she began work at a clinic across town, definitely not out of the 35-mile radius. She breached the contract and now she owes us money!

*Defendant: Dr. Lilac*

What Dr. Lilac is leaving out is that after the first year, we changed the contract. We modified some of the benefits and such and completely left out the non-competition agreement. Therefore, I did not breach the contract. The first contract was canceled by the new one, the one that did not include the non-competition agreement.

.....

CASE #32

The Plaintiff, Mrs. Price, is suing Defendant, Mr. Waters, for damages for invasion of privacy.

*Plaintiff: Mrs. Price*

I was a part of an in vitro fertilization program at Memorial Hospital. Because it was such a new and upcoming program, when the five-year anniversary hit, they had a party. They invited my husband and me. I specifically asked if there was going to be TV crews there because my husband and I are a part of a religious group that would look very badly on us for being a part of this program. They feel that children can only be conceived naturally and not by artificial means. Well, Mr. Waters assured us there weren't going to be TV crews there, but there were. And the whole night, they were harassing us to talk to them. We kept refusing. But, there we were, on the 6:00 evening news the next night! We were shunned from our church and many of our family and friends won't even talk to us! Mr. Waters owes us for the pain he has caused!

*Defendant: Mr. Waters*

Look, I am sorry that I didn't understand the full affect of what would happen to the Prices! I really am. But, this is an important public interest with respect to in vitro fertilization and the public has a right to know and be informed about the procedure! Because of such an important public concern, I do not owe the Prices anything. They should be thanking me for having such a great program at our hospital!

# DECISIONS IN CIVIL CASES

## ***Case #1: DECISION FOR THE DEFENDANT***

The Missouri Court of Appeals for the Eastern District held that because Mr. Allen had no implied permission to climb on the wall leading to the dumpster, Fast Food Chain had no duty to protect Mr. Allen from the wall.

Cochran v. Burger King, Co., 937 S.W.2d 358

## ***Case #2: DECISION FOR THE PLAINTIFF***

The Missouri Court of Appeals held that failure to keep the shopping carts on the Grocery Store's own parking lot was a negligent omission because it is foreseeable that carts that are permitted to stray will cause damage to other property.

Heavrin v. Shop 'n' Save, 922 S.W.2d 463

## ***Case #3: DECISION FOR THE PLAINTIFF***

The Missouri Court of Appeals for the Eastern District held that where the parents' negligence in the exercise of parental supervision has a specific relation to the act that is complained of then they would be held liable.

National Dairy Products v. Freschi, 393 S.W.2d 48

## ***Case #4: DECISION FOR PLAINTIFF***

The Missouri Court of Appeals held that in a case where the media defames a private individual, in Missouri there need only be a showing of negligence on the part of the media.

Englezos v. Newspress & Gazette, 989 S.W.2d 25

## ***Case #5: DECISION FOR THE DEFENDANT***

The Supreme Court of Missouri held that a suit for defamation is a personal one and no action is allowed by a third person, like the wife, for libel directed at someone else. The injury must be to the reputation of the plaintiff.

Bello v. Random House, 422 S.W.2d 339 (Mo. 1967)

**Case #6: DECISION FOR THE DEFENDANT**

The Missouri Court of Appeals held that where construction has not progressed to the point that the structure could not be put to the use for which it was intended, then the contract was not substantially completed.

Dan Ficken Pools, Inc. v. Flynn, 592 S.W.2d 213

**Case #7: DECISION FOR THE DEFENDANT**

The Missouri Court of Appeals for the Eastern District held that where a person is so far removed from the dog, as not to be sheltering the animal nor even in possession of the land at the time, then that person cannot be held liable for any injuries suffered.

Mathes v. Nolan, 904 S.W.2d 353

**Case #8: DECISION FOR DEFENDANT**

The Missouri Court of Appeals for the Eastern District held that in order for an advertisement to constitute an offer it must be specific, definite or certain that the advertiser intended it to be one.

Zigler v. Players, 36 S.W.3d 786

**Case #9: DECISION FOR PLAINTIFF**

The Missouri Court of Appeals held that a person is subject to liability and damages for physical harm to others outside their land when it is caused by activity carried on by him, which he should realise will involve an unreasonable risk of harm to others. The court went on to say that the defendant should use a very high degree of care when dealing with firearms.

Vermillion v. Pioneer Gun Club, 918 S.W.2d 827

**Case #10: DECISION FOR PLAINTIFF**

The Missouri Court of Appeals held that where a person is a business invitee, the store is required to use reasonable care towards that person.

Head v. National Supermarkets, Inc., 902 S.W.2d 305

**Case #11: DECISION FOR THE PLAINTIFF**

The Missouri Court of Appeals held that a person has no duty to mitigate damages where the person is trying to eject something or someone from the property and so there can be a loss of use of the property.

Smith v. Seamster, 36 S.W. 2d. 18

**Case #12: DECISION FOR DEFENDANT**

The Missouri Court of Appeals for the Western District held that a landlord is not liable for non-payment of a tenant where there is no implicit or express understanding that the landlord would guarantee the payment.

Graves v. Berkowitz, 15 S.W.3d 591

**Case #13: DECISION FOR PLAINTIFF**

The Missouri Court of Appeals held that there is no need to show actual injuries in a case of assault.

Van Eaton v. Thon, 764 S.W.2d 674

**Case #14: DECISION FOR PLAINTIFF**

The Missouri Court of Appeals for the Eastern District held that where a person did not intend someone to be a future spouse when his will was executed, then she is considered an omitted spouse and entitled to what she would have received if there was no will, or the entire estate.

In Re Stephenson, \_\_\_ S.W.2d \_\_\_

**Case #15: DECISION FOR PLAINTIFF**

The Missouri Court of Appeals for the Southern District held that there is a strong presumption of marriage in the state of Missouri. Where the marriage ceremony and requirements took place somewhere outside of the state, it is permissible to presume a valid marriage that conformed to statutory requirements based on the parties' actions and conduct.

James v. James, 45 S.W.3d 458

**Case #16: DECISION FOR DEFENDANT**

The Missouri Court of Appeals for the Western District held that not acquiring a marriage license in Missouri is a fatal flaw and therefore, there was no marriage.

Nelson v. Marshall, 869 S.W.2d 132

**Case #17: DECISION FOR DEFENDANT**

The Missouri Court of Appeals for the Southern District held that where there is only suspicion or opportunity for undue influence and not actual exercise of such influence, then the deed is deemed valid.

Robertson v. Robertson, 15 S.W.3d 407

**Case #18: DECISION FOR PLAINTIFF**

The Missouri Court of Appeals for the Western District held that there was substantial evidence that the mother was not of sound mind when the last will was executed and that the son used undue influence over his mother in order to change the will in his favor.

Disbrow v. Boehmer, 711 S.W.2d 917

**Case #19: DECISION FOR PLAINTIFF**

The Missouri Supreme Court held that the language of the contract must be unmistakable, unambiguous, and conspicuous in order to release a party from his/her own future negligence and general language will not suffice.

Alack v. Vic Tanny, 923 S.W.2d 330 (Mo. banc 1999)

**Case #20: DECISION FOR DEFENDANT**

The Missouri Supreme Court held that an injured party is not required to make a settlement and the general rule of freedom to contract includes freedom to make a bad deal.

Sanger v. Yellow Cab Co., 486 S.W.2d 477 (Mo. banc 1972)

**Case #21: DECISION FOR PLAINTIFF**

The Missouri Supreme Court held that a plaintiff can recover for suffering mental distress alone where the defendant should have realized his conduct involved unreasonable risk of mental distress and where the emotional distress is medically diagnosable and is severe enough to be medically significant.

Bass v. Nooney Company, 646 S.W. 2d 765 (Mo. banc 1983)

**Case #22: DECISION FOR PLAINTIFF**

The Missouri Court of Appeals held that an employee is held against her will where she is not compensated for her time and that where there is sufficient evidence of disputed facts and acts of ill will, it is up to the jury to determine which facts existed and whether defendant acted with ill will.

Redican v. Kmart Corp., 734 S.W.2d 864

**Case #23: DECISION FOR PLAINTIFF**

The Missouri Supreme Court held that minor unemancipated children are authorized to bring actions in negligence against their parents. The actions of parents are to be measured by the reasonable parent standard.

Hartman by Hartman v. Hartman, 821 S.W.2d 852 (Mo. banc 1998)

**Case #24: DECISION FOR PLAINTIFF**

The Supreme Court of Missouri held that a spouse may sue his/her spouse for an intentional tort such as this.

Townsend v. Townsend, 708 S.W.2d 646 (Mo. banc 1986)

**Case #25: DECISION FOR DEFENDANT**

The Missouri Court Appeals held that there is no obligation for adjoining landowners to maintain or construct a boundary fence and therefore, the defendant was under no obligation to pay for the fence where there is no express or implied contract.

Dailing v. Hall, 1 S.W.3d 490

**Case #26: DECISION FOR PLAINTIFF**

The Missouri Court of Appeals for the Eastern District held that a minor has the ability to void a contract and pursue a claim, saying that a minor's claims can only be settled by a duly appointed representative and not by a parent.

YW v. National Supermarkets, 876 S.W.2d 785

**Case #27: DECISION FOR PLAINTIFF**

The Missouri Court of Appeals for the Eastern District held that the agreement was unconscionable and where a prenuptial agreement is found to be such, a court is under no duty to stop a party from challenging the validity.

McMullin v. McMullin, 926 S.W.2d 108

**Case #28: DECISION FOR PLAINTIFF**

The Missouri Court of Appeals for the Western District held that a homosexual parent is not automatically unfit, but the relevant issue is whether the activity adversely affects the child, so it is permissible to take it into account as one factor when deciding the issue of custody.

DeLong v. DeLong, \_\_\_ S.W.2d \_\_\_

**Case #29: DECISION FOR PLAINTIFF**

The Supreme Court of Missouri held that the name and address of a victim of a crime who can identify the assailant not yet in custody is not a public record and therefore cannot be printed.

Hyde v. City of Columbia, 637 S.W. 2d 251

**Case #30: DECISION FOR DEFENDANT**

The Supreme Court of Missouri held that in order for there to be a claim of appropriation of one's name, a person must make use of the name to steal the plaintiff's identity for some advantage. Because the Plaintiff signed the yearly agreement that required him to collaborate on various research projects, he impliedly consented the Plaintiff to use his name on grant applications.

Nemani v. SLU, 33 S.W.2d 184 (Mo.banc 2000)

**Case #31: DECISION FOR PLAINTIFF**

The Missouri Court of Appeals for the Eastern District held that there was sufficient evidence to conclude that the original contract was modified rather than being canceled or revoked, and therefore, the Defendant was in breach of contract.

Shelbina Veterinary Clinic v. Holthaus, 892 S.W.2d 803



***Case #32: DECISION FOR PLAINTIFF***

The Missouri Court of Appeals held that where events occur which affect the individual alone and don't touch the sphere of public concern then there is no public interest and the identity of the plaintiff involved in the program was a private matter.

YG v. Jewish Hospital of St. Louis, 795 S.W.2d 488

# APPENDIX

**NOTE: THESE GUIDELINES ARE FOR MOCK TRIALS.**

## **GUIDELINES FOR ATTORNEYS**

### **A. General Guidelines**

3. Attorneys should make and use notes in presenting their cases Real lawyers do not “wing it”
4. Any of the attorneys on a trial team may make objections during the other side’s direct or cross-examinations. If you both object at the same time, you may want to ask the judge to give you a minute to discuss the case with each other and then one of you should state your team’s objection. Confer with your advisory attorney about objections.
5. Attorneys may request a private conversation with the judge to clean up matters during trial. These are called bench conferences or sidebars. Advisory attorneys should be present at these. Bench conferences are not held during appellate proceedings.
6. Attorneys should have obtained ***all*** witness statements. Be familiar with these for direct and cross-examinations. Witnesses can add small, unimportant details to their testimony but they have been told to basically stick to what is in the witness statement. The witness statements are considered to be sworn statements; that is, they are the truth. If a witness changes his/her story to the point that it may affect the outcome of the trial, object immediately. You may also want to ask the judge to remind the witness that the witness is under oath and must tell the truth. A witness who does not tell the truth under oath can be prosecuted for the crime of perjury.
7. Carefully read the *Simplified Rules of Evidence* in this handbook. They will assist you in knowing how to ask questions, state objections, and place exhibits into evidence.



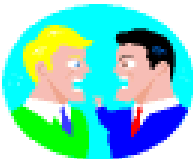
## B. Trial Procedure Guidelines for the Criminal and Civil Trials



1. **Voir dire--jury selection.** This is the portion of a trial where jurors are chosen. Usually 50-60 potential jurors are called in order to get twelve jurors who are unbiased and able to serve on the jury. Each party's lawyer gets a chance to ask questions of the jury panel. If a lawyer feels that a juror is unsuitable, the lawyer may ask the judge to "strike the juror for cause." If the judge agrees with the lawyer, the potential juror is excused. If the judge disagrees, the lawyer may use a peremptory strike to remove the juror. Each party's lawyer has six peremptory strikes. The lawyers use their peremptory strikes to remove potential jurors whom they feel may not be the best for their case. A lawyer may not use peremptory strikes for racist or sexist reasons.
2. **Opening Statement.** The goal of opening statement is to tell the jury what you are going to try to prove during the presentation of your case. This should not be an argument--just a statement of what you think the evidence at trial will be. With this in mind, as you prepare opening statement, follow these suggestions:
  - Introduce yourself to the jury. Tell them what this case is about.
  - State the applicable law.
  - Give a short, logical summary of the facts of the case. Tell what happened first, second, and so on. Give the jury a preview of how you will prove your case.
  - Mention what witnesses will be testifying for your side and tell the jury what you think their testimony will be.
  - While you should use notes, try not to read the opening statement. Try to make eye contact with the jury. Give your opening with confidence. This is your first opportunity to show the jury that you believe in your case.
1. **Direct Examination.** The goal of direct examination is to have your witnesses tell the story of what happened in the light most favorable to your case. This is done through questions beginning with **Who, What, Where, When, and Why**. It is important for you to write out the questions for direct examination. If you write out your questions for each witness, you will not forget to ask an important question. Do not ask questions that call for an opinion. Opinion testimony is usually only given by an expert. There are no expert witnesses in this case. Follow these simple guidelines when preparing for direct examination:
  - Begin each direct examination by simply asking the witness to state his/her name. You may want to ask one or two more introductory questions such as the witness's address, etc.

- To get into the heart of the case, you might ask the witness if he/she knows the defendant, the plaintiff, the victim, etc. When the witness answers “yes” to this question, ask how the witness knows this person. Then you may want to establish how the witness knows anything about your case:
    1. State your name.
    2. Where do you live?
    3. Do you know the defendant?
    4. How do you know him or her?
    5. Then ask the questions that will help your witness tell the story he or she needs to tell you about the case.
  - You may **not** ask leading questions such as, “You were going 70 mph, weren’t you?” Instead ask, “How fast were you going?”
  - **PRACTICE WITH YOUR WITNESS.** This is important for several reasons. You and your witness will be comfortable with each other. You will know exactly what information each witness will contribute to the trial. You can caution your witness about how you want certain questions answered.
  - **DO NOT ASK A QUESTION TO WHICH YOU DO NOT KNOW THE ANSWER.** This is a very important rule for direct examination. You do not want your own witness to surprise you!
  - Listen to the answer your witness gives. This will give you an idea of a logical question to ask next of your witness.
  - When you are finished with your witness, but before you let the witness leave the witness chair, take a few minutes to look over the questions you have prepared. You want to make sure this witness has said everything you needed the witness to say.
  - Make eye contact with your witness.
- 2. Cross-examination.** The goal of cross-examination is to make the other side’s witnesses less believable in the eyes of the jury. These are a few simple guidelines for cross-examination:
- Prepare in advance by reading the witness statements. You may want to write out a few questions but the key will be to listen to the witness’s testimony at trial and jot down a few questions then.

- **ALWAYS USE LEADING QUESTIONS WHEN CROSS-EXAMINING A WITNESS.** A leading question is one where the answer is always a simple, “yes” or “no”. For example, “You have told several people that you did not like Lynn Andrews, haven’t you?” or “Isn’t it true that on several occasions you told the defendant that you hated him?” Do not let the witness explain anything. Politely and firmly remind the witness to give a simple “yes” or “no” answer. You may also ask the judge to remind the witness to do this.
- Some things that you might want to establish during cross-examination are as follows:
- The fact that the witness might not be telling the truth. For example, you might want to point out that the witness’s testimony at trial is not exactly the same as what the witness has in his/her statement.
- Whatever weaknesses a witness has that might have affected what the witness thought he/she saw or heard: bad eyesight, poor hearing, intoxicated when witnessing an event, etc.
- A witness’s bias or prejudice. For example, you might want to show that the witness has been a good friend of the plaintiff for a long time and would, therefore, want to help the plaintiff out:
  1. “You have known Karen Smith for a long time, haven’t you?”
  2. “You and Karen are good friends, aren’t you?”
  3. “You are happy to help Karen out here today at this trial, aren’t you?”



**Note: DO NOT FIGHT WITH THE WITNESS.** Too many attorneys think that cross-examination means being hostile, being argumentative or being mean. Be firm but be polite. Do not try to intimidate or harass your witness.

3. **Closing Argument.** The goal of closing argument is to sum up what the evidence in your case has been. In the civil trial, the plaintiff’s attorney will want to state what the plaintiff has tried to prove and show the jury how the evidence in the case has proven this. Likewise, in the criminal case, the prosecutor will want to state the elements of the crime and show how the evidence supports each and every one of these elements. The defendants in both cases will want to argue how the evidence in their cases clearly shows that the plaintiff or prosecutor did not give an accurate picture of what

happened. Another goal of closing argument is to point out weaknesses in the other side's case. Some guidelines for closing arguments are as follows:

- Prepare in advance. Write out what you want to say. Be sure you point out what evidence proves your case and shows how weak the other side's case really is.
- Begin by thanking the jurors for their time.
- It is acceptable to use notes but during closing argument it is important to look at the jury, argue directly to the jury, and sound confident that you have proven your case. Review all the evidence with the jury, including the witnesses' testimony.
- Conclude by asking the jury to find in your favor.

# GUIDELINES FOR WITNESSES

Playing a part of a witness is like being in the school play. You get to pretend to be somebody else and have fun in the process. Follow these simple guidelines and you will be a smashing success at your mock trial:

- Be sure to obtain your witness statement when you sign up to be a witness. **YOU MUST HAVE THIS STATEMENT.**
- Read the witness statement carefully. These will be the facts that you will testify about at trial. The attorney who calls you as a witness at trial is counting on you to stick to the story in your statement. If you do not, the judge may become angry with you and the other side's attorney will make you look like a liar in front of the jury. A witness who does not tell the truth under oath can be prosecuted for the crime of perjury.
- It is acceptable to add minor details to your testimony, just do not change any of the facts of the case.
- You may refer to your statement at trial if you need to refresh your memory.
- Cooperate with the attorneys from both sides. At all times, answer the question that is asked as briefly as possible. If a question requires only a "yes" or "no" answer, give only that.
- Practice with your attorney so you know what is expected. Do not panic if the attorneys or the judge ask an unexpected question. Answer the best that you can. It is perfectly acceptable to answer, "I do not know." Relax. Remember this is a fun experience!



# GUIDELINES FOR JUDGES AND BAILIFFS

## **For Judges**

- Know your case.
- Have a copy of this handbook that contains the *Simplified Rules of Evidence* at the bench with you. You may need to refer to it to overrule or sustain objections. To overrule an objection means that you believe there is no problem with an attorney's questions or evidence. To sustain an objection means you believe the attorney is not following the rules of evidence. If you sustain an objection to an answer that is given by a witness, you must then tell the jury that they cannot pay attention to that answer.
- Maintain order in your courtroom. Be sure to ask everyone to be seated once you are seated in your chair.
- Help the bailiff and the advisory attorney keep the proceedings going as scheduled.
- Judges are formal people, so act formal!

## **For Bailiffs**

- You will be the #1 timekeeper. You will keep things moving along on time.
- Every time the judge(s) leaves the courtroom, you must ask everyone to please rise.
- In the trial court, you will administer the oath of office to the witnesses. Simply ask them to raise their right hands and ask them if they swear to tell the truth and nothing but the truth.

# SIMPLIFIED RULES OF EVIDENCE

In American trials, elaborate and complicated rules govern what evidence may or may not be introduced at trial. The rules help make the trial fair for all parties. If it appears these rules are being violated, an attorney may object to the judge. The judge then overrules the objection and lets the evidence in or sustains the objection and keeps the evidence out.

The following rules are simple but hopefully, will help make your mock trial experience fair and meaningful.

## 1. Direct Examination

- Witnesses may not be asked leading questions. A leading question is one that can only be answered with yes or no.

*Example of a leading question:* “Mr. Hayes, isn’t it true that you know Angela Winn?”

*Example of a correct direct question:* “Do you know Angela Winn, Mr. Hayes?”

- Evidence about a person’s character should not be introduced on direct examination. For example, a witness cannot be asked if the witness goes to church every Sunday unless this information has something to do with the case.
- A witness may look at the witness statement if the witness cannot remember the information in the statement since this is a mock trial and the witness is playing a part.

## 2. Cross-Examination

- Leading questions are permitted.
- An attorney may attempt to show that a witness is lying, is prejudiced, or has physical disabilities that make it impossible to have seen or heard what happened.

*Example:* “Isn’t it true that you first told the police that the car was green and now you are saying it is blue? You really aren’t sure of the color, are you?”

*Example:* “You usually wear glasses, don’t you? You were not wearing them the day of the accident, were you?”

*Example:* “You have hated the defendant for a long time, haven’t you?”

- An attorney may bring out a witness's past bad acts and prior convictions for crimes during cross-examination.

*Example:* "You have been known to hit children, haven't you?"

*Example:* "You have been convicted of robbery before, haven't you?"

## **1. Re-Direct Examination**

- A lawyer may question his witness again after cross-examination but only on matters brought up during cross-examination.

## **2. Hearsay**

- Hearsay is tricky. Any evidence of a statement made by someone who will not testify which is offered as fact is hearsay.

*Example:* Witness says, "I heard that Sam Rowan has a criminal record."

*Example:* Witness says, "I heard from my mother that Buffy Smith is an alcoholic."

- There are many exceptions to this rule and for this mock trial, they are too numerous to list. If this becomes an issue at your trial, your advisory attorney will be able to assist you.

## **5. Witness Opinions**

- A witness may not give an opinion unless the witness is an expert.

## **6. Relevance of Evidence**

- Generally, only relevant evidence is admitted. This means only evidence that tends to prove or disprove something in the case. For example, questions about age, religion, marital status, employment, etc. are usually irrelevant and, therefore, not admissible.

## **7. Objections**

- An objection to evidence, a witness's testimony, the way a lawyer is asking questions, etc., is an important part of any trial. Whenever an attorney thinks that a rule of evidence has been violated by the other side's attorney, the attorney should rise and say, "I object." The judge will then ask the objecting attorney to say why the attorney is objecting. If the judge agrees with the objecting attorney, the judge will sustain the objection and the evidence will

not come in, the witness will not be allowed to answer a question, or the lawyer will not be allowed to ask the question or will be asked to rephrase the question.

- Following are some of the usual objections made by attorneys during a trial:
  - a. “This testimony is irrelevant.” In other words, the evidence has nothing to do with the case.
  - b. “The attorney is asking leading questions.”
  - c. “The witness is giving a narrative response.” This objection is used when a witness launches into a long story instead of the lawyer asking questions. That is why, when a witness is telling what happened, the lawyer questioning the witness should ask occasionally, “Then what happened?”
  - d. “That testimony is about character.” On direct examination, character evidence about the defendant, plaintiff, witness, victim, etc., cannot be introduced.
  - e. “That is hearsay.” Use this objection when the lawyer asks the witness what somebody else said.
  - f. “The witness has already answered that question.” This objection is given most often during cross-examination when the other side’s attorney keeps asking the same question in an attempt to get the witness to change the witness’s testimony.
  - g. “That question asks for an opinion and this witness may not give an opinion.”
  - h. “The witness has no personal knowledge of this matter.” If someone was not present for the occurrence, use this objection. For example, in the criminal case no one actually saw the fight, so no one can say what happened outside. They can testify about what happened before Bart and Sally left the house and what happened when they came back in.
  - i. “Your honor, the attorney is harassing my witness.” This objection is given during cross-examination.”

**If** a witness has already answered a question, **and** an attorney objects to the answer, **and** the judge sustains the objection, the attorney should ask that the witness’s answer be taken off the record and ask the judge to tell the jury that they cannot pay attention to the answer.